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United States v. Causey: The Fifth Circuit Gives the Green Light to Pretextual Arrest

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Johnny and Shelley D. are suspected by the local police department of committing a recent bank robbery. They are both well respected members of the community who, unfortunately, have recently fallen on bad times. Neither has a prior felony conviction, nor has either been arrested for any offense. However, the police have been tipped off by a local informant that these two are the persons who committed the bank robbery in question.

The police desire to bring Johnny and Shelley in for questioning regarding this robbery, but they have no probable cause to detain them. There are no witnesses who identified them at the scene; their fingerprints were not found at the bank; and their automobile does not fit the description of the car used in the robbery. Further, the police have not observed any unusual activity by them after the robbery.

One of the investigating police officers decides to run a random search of the police records to find anything that may permit the arrest of the couple. By chance, the detective discovers that Johnny and Shelley each have one outstanding parking ticket. Consequently, Johnny and Shelley are arrested for the outstanding parking tickets and brought to the police station for questioning. However, the line of questions by the police does not concern the parking tickets. On the contrary, they are questioned only about the bank robbery which they allegedly committed.

The media is tipped off that Johnny and Shelley have been arrested for the bank robbery and the headlines read: "Pillars of Local Community Taken into Custody for Questioning About Bank Robbery." Although they are subsequently released and never prosecuted, the reputations of Johnny and Shelley are forever marred in their community.

Certainly, this sounds like an outlandish hypothetical involving fictitious characters. However, after the recent en banc decision of the United States Court of Appeals for the Fifth Circuit in *United States v. Causey*,[1] a situation such as that presented above is no longer outside the realm of possibility.

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1. 834 F.2d 1179 (5th Cir. 1987) (en banc).

On December 19, 1985, Capital-Union Savings and Loan in Baton Rouge, Louisiana, was robbed of $1,800 by a man wearing a baseball cap and sunglasses. An investigation was begun by Baton Rouge Police Officer Bart Thompson and Federal Bureau of Investigation (F.B.I.) Special Agent James Watson. Police Sergeant Sid Newman of Baton Rouge "CRIME-STOPPERS" fame telephoned the investigators advising them that a reliable female informant had called stating that Reginald James Causey had committed the robbery. The informant gave Newman Causey's address and a description of his automobile, which Newman gave to Thompson and Watson. However, Newman did not provide them with the name of the informant or any other information to prove her reliability.

Thompson and Watson subsequently checked the records of the State Motor Vehicle Registration Bureau and found that the automobile described by the informant was not registered in the name of Reginald Causey but, rather, to another person named Causey. In addition, the address provided was that of Reginald Causey's parents.

Officer Thompson also obtained an arrest history of Causey. The physical description of Causey provided in the arrest history matched that given by a bank teller. More importantly, the arrest history indicated that Causey had previously been convicted of bank robbery. This information led Officer Thompson to "stake out" the house of Causey's parents, but neither the vehicle nor Causey appeared.

The next day Thompson and his partner, Officer Michael Morris, began to ponder ways in which they could pick Causey up for questioning regarding the recent bank robbery. The officers knew that they lacked probable cause to arrest Causey for the bank robbery and thus if Causey did not want to talk to them, they could not force him to do so.

As the officers considered methods by which Causey could be detained, "someone thought of looking in the City Court warrant book."[2] In the book, the officers discovered that, in 1978, a warrant had been issued for Causey's arrest for failure to appear in court on a misdemeanor theft charge. Although the prescriptive period on the misdemeanor theft had expired,[3] the failure to appear charge had not, as there is no such statute of limitations within which a failure-to-appear charge must be prosecuted. In addition, because the arrest warrant was for failure-to-appear, Causey would not be entitled to bail if arrested. Officer Thompson subsequently contacted the city court judge who had issued the warrant to insure its validity and to notify the judge that Causey would soon be arrested on that warrant.

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2. 818 F.2d 354, 355 (5th Cir.), rev'd on rehearing, 834 F.2d 1179 (1987) (en banc).
3. See La. Code Crim. P. art. 572.

On Monday, December 23, at 10:30 a.m., Officers Thompson and Morris located Causey and placed him under arrest for the failure-to-appear warrant. Once placed in the police car, Causey was given his *Miranda* warnings. Causey was then asked if he understood his rights, and he responded that he did.

There is conflicting testimony as to what transpired thereafter. It is Causey's contention that once in the car, one of the police officers stated, "[Y]ou know that what we picked you up on isn't going to stick . . . . Well, you know it's not going to stick but you can come off of that. And besides, I want to talk to you about something else."[4] The officers, however, categorically denied making those statements, and contended they never considered the warrant to be invalid.[5]

Once at the police station, Causey was again read the *Miranda* warnings, and the officers testified that they obtained an oral waiver from Causey of his right to counsel. Causey, however, testified that when the police asked him to authorize a search of his belongings at his parents' house, he asked Officer Thompson for an attorney, stating, "could I have—would I be allowed a chance to have an attorney in my presence to help me answer these type of questions which he was asking me." To this, Causey stated Thompson responded, "'well, that wouldn't matter because whether [you] gave [me] consent or not, [I] could go through a judge, which would just take a couple of hours longer, get a warrant and [I] would be able to go out and search the house anyway.'"[6]

In addition, Causey testified that Thompson "began to use black statements like, 'the district attorney is going to . . . prosecute you and bring forth [the] Habitual Criminal Act . . . which means . . . an automatic life sentence. . . .'"[7]

Causey then testified that although he denied involvement in the bank robbery, the police pressured him into discussing it by using statements such as "'[w]ell, we know you did it,'" and "'[w]e feel you did it.'"[8] Further, Causey testified that the station house supervisor, Lieutenant Ronnie Alford, told him the following:

> From what I hear, they have an armed robbery case against you and it looks bad . . . . It'll be your third felony conviction and . . . the D.A.'s office is definitely going to prosecute and ask for the Habitual Criminal Act . . . . [Y]ou're going to be found guilty because of your background . . . . What I rec-

4. 818 F.2d at 356.
5. Id.
6. Id.
7. Id.
8. Id.

> ommend to you is that you . . . let me call the F.B.I. . . . in and you give them a confession and take the matter into federal court. That way, you would only face twenty years instead of [the] Habitual Criminal Act, a life sentence.[9]

In addition, Causey stated that Lt. Alford promised that if Causey confessed to the F.B.I., Alford would "'personally call the D.A.'s office and get them to drop charges of one count of armed bank robbery . . . .'"[10]

Contrary to Causey's testimony, Officers Thompson and Morris denied that Causey ever indicated a desire to terminate questions; ever requested to speak to a lawyer or have a lawyer present; ever received any promises or threats; or was ever subjected to any form of coercion.

Similarly, Lt. Alford testified that he only discussed with Causey his background, a subject he routinely discussed with criminal suspects held at the station. Alford stated that the bank robbery was not discussed between them. However, Officer Thompson contradicted Lt. Alford and testified that Alford had indeed questioned Causey about the bank robbery.[11]

Lt. Alford also testified that he did not call the F.B.I. on his own volition, but rather telephoned the F.B.I. only upon the suggestion of Causey. However, Lt. Alford later changed his position and stated that he, not Causey, initially suggested calling the F.B.I. The government admitted this fact as true in its memorandum in opposition to the suppression motion.[12]

Lt. Alford called F.B.I. Special Agent Watson to come to the station and take a confession from Causey. Alford told Watson that Causey wanted to make a confession to the bank robbery although Causey had made no prior admissions. Watson gave Causey a written *Miranda* warning and waiver form, and then read the warning to him aloud. In addition, Special Agent Watson testified that he specifically asked Causey whether the local police had made any deals with him or if Causey had been threatened or promised anything. Watson testified that Causey answered in the negative.[13]

Watson asked Causey several more questions and then drafted a confession which Causey signed between 2:00 and 2:30 p.m. Causey argued that he signed the confession:

> [t]o get the situation—get the matter out of the state's hands, totally . . . [b]ecause I'm fully aware of the state system here.

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9. Id.
10. Id.
11. 818 F.2d at 357.
12. Id.
13. Id.

> And it's a bad situation for a guy in my behalf (sic); background alone could—I mean, evidence doesn't have to be anything in the state system.[14]

Before the trial, Causey's lawyer moved to suppress Causey's statements, both written and oral, for the following reasons: 1) coercion and improper influence; 2) violation of the right to counsel; 3) unlawful detention; and 4) illegal pretextual arrest based on the bench warrant, arguing that the arrest was a pretext and the warrant in question had prescribed. The trial judge, John V. Parker, denied the motion reasoning that the warrant was valid when issued and remained valid until executed.[15]

Causey professed his innocence at trial, relying on his alibi of babysitting at his parents' house when the robbery occurred. The jury, however, found Causey guilty of one count of bank robbery.[16]

On May 22, 1987, a panel of the United States Court of Appeals for the Fifth Circuit, composed of Judges Alvin B. Rubin, Henry A. Politz, and Irving L. Goldberg, reversed Judge Parker, holding that Causey's fourth amendment rights had been violated by the pretextual arrest. The panel further found Causey's confession inadmissible as a "fruit of the poisonous tree."[17]

In reviewing the admissibility of the confession of Causey, the panel, in an opinion by Judge Rubin, stated the issue as follows:

> [w]hether a confession obtained as a result of an arrest made pursuant to a valid warrant is admissible if the arrest was made solely to enable the police to interrogate a suspect about another, unrelated matter and the arresting officer had no intention that the suspect be prosecuted for the crime on which the arrest was based.[18]

The court noted that the arresting officers' "sole reason to make the arrest was to gain the opportunity for custodial interrogation of Causey regarding the bank robbery."[19] Indeed, the officers admitted at trial to arresting Causey for this pretextual purpose, as illustrated by the following excerpt:

> Q. Officer Morris, the only thing I wanted to clear is—is that the only reason y'all took [Causey] into custody was to take him downtown and continue your investigation of this bank

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14. Id.
15. Id.
16. Id.
17. 818 F.2d at 362.
18. Id. at 358.
19. Id. at 356.

robbery, is that correct?
A. Yes, sir; our objective is not to serve city court warrants.
Q. I understand that.
A. Yes, sir.
Q. And generally, you don't even fool with those city court warrants?
A. In general; no sir.
Q. So your only purpose in taking Mr. Causey into custody on this bench warrant was an investigatory one?
A. Yes, sir.[20]

The court then reviewed the relevant United States Supreme Court and Fifth Circuit jurisprudence to determine whether a confession obtained under a pretextual arrest is admissible as evidence. Although the Supreme Court has provided that "subjective intent alone 'does not make otherwise lawful conduct illegal or unconstitutional,'"[21] the Fifth Circuit noted that the Supreme Court has also stated that there was "no suggestion whatever that this standard procedure . . . was a pretext concealing an investigatory police motive."[22]

The Fifth Circuit panel, relying on the above language, found that "the arrest, and hence the seizure, of Causey could not have been objectively reasonable, because the objective facts and circumstances would not have justified any officer in making the arrest. The arrest was made only to avoid operation of the fourth amendment."[23]

The court then looked to its own jurisprudence to determine whether this confession, obtained as the result of a pretextual arrest, was admissible. The court primarily relied on *Amador-Gonzalez v. United States*[24] which held that "a confession obtained as a result of a search, conducted after the pretextual arrest of the defendant for a minor traffic offense, was procured in violation of the fourth amendment and must be suppressed."[25] The panel noted the existence of a contrary holding in the circuit,[26] but felt bound to follow the *Amador-Gonzalez* case. Consequently, the court held that Causey's pretextual arrest violated his fourth amendment rights.

The panel finally examined whether the provision of several *Miranda* warnings to Causey dissipated the taint of his illegal arrest. The court

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20. Id.
21. Id. at 358 (footnote omitted) (quoting Scott v. United States, 436 U.S. 128, 136, 98 S. Ct. 1717, 1723, reh'g denied, 438 U.S. 908, 98 S. Ct. 3127 (1978)).
22. Id. at 358-59 (footnote omitted) (quoting South Dakota v. Opperman, 428 U.S. 364, 376, 96 S. Ct. 3092, 3100 (1976)).
23. 818 F.2d at 359.
24. 391 F.2d 308 (5th Cir. 1968).
25. 818 F.2d at 360.
26. See United States v. Cavallino, 498 F.2d 1200 (5th Cir. 1974).

noted that the only possible intervening factors between the illegal arrest and the confession were the *Miranda* warnings. The court held the warnings were not sufficient intervening events to dissipate the taint of Causey's illegal arrest. Consequently, the panel held that the confession given by Causey was the fruit of his illegal arrest[27] and should be excluded from evidence.

Shortly thereafter, the Fifth Circuit granted a rehearing en banc.[28] At the rehearing,[29] a divided Fifth Circuit held that the confession was, indeed, admissible even though the arrest was admittedly a pretext to question Causey about the bank robbery.[30] After briefly restating the facts, Judge Gee attacked the panel's reliance on a "'continuing line of Fifth Circuit authority,' that unless an arrest is made with the appropriate subjective intent, it is invalid and whatever results from it is 'tainted.'"[31] Judge Gee noted that the most recent of these cases was over nine years old, and, since that time, the Supreme Court "has made plain that it is irrelevant what subjective intent moves an officer in taking such action as this; what signifies is the officer's *actions*, objectively viewed in light of the circumstances confronting him."[32]

Judge Gee did not address the Fifth Circuit cases relied upon by the panel, instead dismissing them in a footnote, stating that "[t]his 'continuing line of Fifth Circuit authority' . . . is drawn with vanishing ink; the closer one looks at the cases, the less meets the eye."[33] He stated that the cases[34] relied upon did not provide a "continuing line of Fifth Circuit authority," and even if they did, later Supreme Court cases have provided otherwise.

The en banc majority relied on three Supreme Court cases for its finding that the confession was admissible even though it was the product of a pretextual arrest. The first of these cases is *Scott v. United States*,[35] in which the majority argued that the Supreme Court rejected consideration of an officer's subjective state of mind. The Fifth Circuit based its conclusion on the following language:

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27. See Wong Sun v. United States, 371 U.S. 471, 83 S. Ct. 407 (1963).

28. See 822 F.2d 511 (5th Cir. 1987).

29. 834 F.2d 1179 (5th Cir. 1987).

30. The en banc opinion was written by Judge Gee in which Chief Judge Clark and Judges Reavley, Garwood, Jolly, Higginbotham, and Davis concurred. The dissents consisted of Judges Rubin, Politz, Goldberg, Randall, Johnson and Williams.

31. 834 F.2d at 1181.

32. Id. at 1182.

33. Id. at n.6 (citation omitted).

34. See United States v. Cruz, 581 F.2d 535 (5th Cir. 1978) (en banc); United States v. Tharpe, 536 F.2d 1098 (5th Cir. 1976) (en banc); and Amador-Gonzalez v. United States, 391 F.2d 308 (5th Cir. 1968).

35. 436 U.S. 128, 98 S. Ct. 1717 (1978).

> [A]lmost without exception in evaluating alleged violations of the Fourth Amendment the Court has first undertaken an objective assessment of an officer's actions in light of the facts and circumstances then known to him.
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> . . . .
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> We have since held that *the fact that the officer does not have the state of mind* which is hypothecated by the reasons which provide the legal justification for the officer's action *does not invalidate the action taken as long as the circumstances viewed objectively, justify that action.*[36]

The majority then looked to *United States v. Villamonte-Marquez.*[37] There the Supreme Court reversed a Fifth Circuit decision upholding a drug conviction. In that case, customs officers had boarded a large sailboat supposedly to inspect the ships documents, as permitted by 19 U.S.C. § 1581(a). The defendants contended that the customs officers, accompanied by a local law enforcement official, had acted on an informant's tip that drugs were aboard, thus preventing reliance on the statute by the officers because of the lack of a "pure heart" by the law enforcement officials. The en banc majority found that the Supreme Court had dismissed this argument in a footnote, stating that "'[t]his line of reasoning was rejected in a similar situation in *Scott* . . ., and we again reject it.'"[38]

The majority also relied on *Maryland v. Macon,*[39] in which police officers purchased allegedly obscene materials from an adult bookstore with marked money. There the defendants argued that "[w]hen the officer *subjectively intends* to retrieve the money while retaining the magazines, . . . the purchase is tantamount to a warrantless seizure."[40]

In dismissing this argument, the Supreme Court stated:

> This argument cannot withstand scrutiny. Whether a Fourth Amendment violation has occurred "turns on an objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time," . . . and not on the officer's actual state of mind at the time the challenged action was taken.[41]

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36. 834 F.2d at 1183 (citing Scott v. United States, 436 U.S. at 137-38, 98 S. Ct. at 1723) (emphasis by Fifth Circuit; citations omitted).

37. 462 U.S. 579, 103 S. Ct. 2573 (1983).

38. 834 F.2d at 1183-84 (citing United States v. Villamonte-Marquez, 462 U.S. at 584 n.3, 103 S. Ct. at 2577 n.3).

39. 472 U.S. 463, 105 S. Ct. 2778 (1985).

40. 834 F.2d at 1184 (citing Maryland v. Macon, 472 U.S. at 470-71, 105 S. Ct. at 2782-83) (emphasis by Fifth Circuit; citations omitted).

41. Id. (citing Maryland v. Macon, 472 U.S. at 470-72, 105 S. Ct. at 2783).

The majority in *Causey* relied on these three cases to find that the officers had reasonably relied on the outstanding arrest warrant, and that their subjective intent was of no moment. The majority then overruled *Amador-Gonzalez* insofar as it was inconsistent with their rehearing decision. Finally, the majority stated what it considered to be the correct rule:

> [W]hile a showing of objectively reasonable good faith on the part of police officers will ordinarily redeem honest errors and prevent the application of the exclusionary rule, in a case where the officers have taken no action except what the law objectively allows their subjective motives in doing so are not even relevant to the suppression inquiry. And the reason lies in the purpose of that rule: to deter *unlawful* actions by police. Where nothing has been done that is objectively unlawful, the exclusionary rule has no application and the intent with which they acted is of no consequence.[42]

Although Judge Gee accuses Judge Rubin of citing a line of authority drawn "with invisible ink," it is suggested that Judge Gee, not Judge Rubin, is guilty of sleight of hand. Indeed, Judge Gee's treatment of the *Amador-Gonzalez* case implies that the panel, in that case, did not find that the pretextual arrest rendered the subsequent search illegal, when in fact the pretextual arrest did precisely that.

In *Amador-Gonzalez*, two detectives from the Narcotics Division of the El Paso Police Department suspected that the defendant possessed narcotics. The detectives did not, however, have probable cause to arrest him on that charge. One detective continued to observe the defendant for approximately an hour and several times saw him make a left turn, onto a two-way street, unlawfully cutting into the wrong lane. The detective decided to stop the defendant's car and called for another police car. The police cars followed the defendant for five blocks before making the arrest, and clocked him going thirty-six miles an hour in a thirty mile an hour zone.

When Gonzalez was stopped, a detective asked him for his driver's license, which he did not have. The officers then asked him for his passport or local crossing card upon learning that Gonzalez was from Juarez, Mexico.

The detectives searched Gonzalez's car and found three grams of heroin. He was subsequently arrested and also ticketed for the traffic offenses. Later, at the police station, Gonzalez confessed to participation in a drug ring. Gonzalez was never booked on the traffic offenses.

The Fifth Circuit, in an opinion by Judge Wisdom, held the arrest was merely a pretext to search the defendant's car. Indeed, the court

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42. Id. at 1184-85 (citation omitted).

stated that "[t]he arrest must not be a mere pretext for an otherwise illegitimate search."[43] The court further stated that the "search must have some relation to the nature and purpose of the arrest."[44] The court went on to state that although the arrest may have been legal, it could not provide the foundation for the subsequent search. In the words of the court:

> In the circumstances of this case, the arrest, no matter how lawful in itself, cannot support the search. It is clear from the testimony of [one of the arresting detectives] that the real purpose for making the arrest was to search the defendant's car.[45]

Significantly, the court was swayed by the fact that narcotics officers generally do not make arrests, nor do they carry ticket books. In the opinion of the court, these detectives took unusual measures to arrest Gonzalez in order to search his automobile. As a result, the court held that this arrest was, in fact, pretextual and therefore the search was invalid.

While it is true, as Judge Gee noted, that the other panel judges, Judges Coleman and Godbold, concurred in the result only, it should be noted that the result was that the arrest was pretextual, thus rendering the search illegal. Indeed, Judge Coleman stated that "the decisive point is that as to traffic violations the arrest in this case was pretextual."[46] Further, Judge Godbold stated that "[t]here was probable cause for the traffic arrest, but the acknowledged motive for making the arrest was to search the car for narcotics. . . . [S]uch a search is invalid, and the evidence obtained from the search and the incriminating statement which is the fruit thereof must be suppressed."[47] Neither Judge Coleman nor Judge Godbold wanted to express an opinion on the validity of the arrest. However, both believed that the arrest was pretextual and that the search incident thereto was invalid.

Another Fifth Circuit case decided in 1987 also provides a foundation for the illegality of pretextual arrests. In *United States v. Johnson*,[48] the defendant was convicted of fraudulent possession of credit card account numbers in violation of 18 U.S.C. § 1029(a)(3). In *Johnson*, federal secret service agents received information indicating that the defendant had been engaged in counterfeiting credit cards. During their investigation of Johnson, the agents were informed of an outstanding California warrant for the defendant's arrest for possession of counterfeit

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43. 391 F.2d 308, 313 (5th Cir. 1968) (citations omitted).
44. Id.
45. Id. at 314.
46. Id. at 319.
47. Id.
48. 815 F.2d 309 (5th Cir. 1987).

credit cards.[49] Subsequently, Johnson was arrested, taken into custody, searched, and his car was inventoried. The body search and inventory searches yielded an altered credit card and other relevant evidence.

In affirming the conviction, a Fifth Circuit panel addressed Johnson's claim that the arrest was pretextual. The court stated the test for pretextual arrests as follows:

> A pretextual search can occur, for example, where police discover evidence in a search incident to or an inventory following an arrest for an offense which the officer would have simply ignored but for his desire to search. When a defendant alleges that an arrest was pretext to conduct an otherwise impermissible search, the appropriate inquiry is whether a reasonable officer would have made the arrest absent an illegitimate motive to search. If a reasonable officer would not have made the arrest absent illegitimate motive, then the resulting search incident to or inventory is unlawful.[50]

The court held that the arrest and search of Johnson was not illegal because, although the secret service generally has no interest in executing state arrest warrants, this warrant was for crimes closely connected to the one upon which they desired to arrest Johnson.

Therefore, Judge Gee notwithstanding, the Fifth Circuit has, in fact, consistently considered the subjective state of mind of an arresting officer in the pretextual arrest context. This theory was not one dreamed up by Judge Rubin and supported by little jurisprudence. On the contrary, Judge Rubin relied on a long and firmly established legal principle of the Fifth Circuit.

In addition, although Judge Gee posits that the Supreme Court has eliminated the arresting officer's subjective motivation, the Court has yet to announce this principle. Indeed, although Judge Gee relies on *Scott v. United States*[51] and *United States v. Robinson*[52] as eliminating the subjective element of the pretextual analysis, the language relied upon states merely that:

> [T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken *as long as the circumstances, viewed objectively, justify that action.*[53]

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49. Id. at 316.
50. Id. at 315 (citations and footnotes omitted).
51. 436 U.S. 128, 98 S. Ct. 1717 (1978).
52. 414 U.S. 218, 94 S. Ct. 467 (1973).
53. 436 U.S. at 138, 98 S. Ct. at 1723.

Further, in *Robinson* the court stated that "[w]e think it is sufficient for purposes of our decision that respondent was lawfully arrested for an offense, and that Jenks' placing him in custody following that arrest was not a departure from established police department practice."[54] In addition, Justice Powell, in his concurring opinion, stated that the arrest may be invalidated if the defendant can prove that he was taken into custody "only to afford a pretext for a search."

Scott and *Robinson* do not stand for the proposition that the officer's subjective motivation is never to be considered, as Judge Gee suggests. Rather, these cases state that if the circumstances are objectively justifiable, then the subjective intent of the officer is not to be considered. This is a far cry from a total elimination of the consideration of the officer's subjective intent. As yet, the Supreme Court has not decided a case in which the arresting officers acted in an unjustifiably pretextual manner. Consequently, the issue of consideration of the state of mind of the arresting officer is still unsettled.

The Supreme Court further confused the issue in *Colorado v. Bertine*,[55] where the defendant was legally arrested for drunk driving. The defendant was taken into custody, and his van was impounded. Subsequently, the police conducted an inventory search of the van. In the process, the police officers opened a closed backpack and discovered cocaine.

In upholding the legality of the inventory search, the Court, in an opinion by Justice Rehnquist, stated that "[i]n the present case, . . . there was no showing that the police . . . acted in bad faith or for the sole purpose of investigation."[56] The Court later noted that "[t]here was no showing that the police chose to impound Bertine's van in order to investigate suspected criminal activity."[57]

It is clear that the Supreme Court has not eliminated the element of the officer's state of mind. Indeed, as Professor LaFave notes, this language possibly invites "a broader, *Gonzalez*-type approach" to pretextual arrest analysis.[58]

Therefore, although the en banc Fifth Circuit majority purports to be in line with the Supreme Court, that is not the case. On the contrary, the prior panel opinion written by Judge Rubin is a more correct statement of the law. An officer's state of mind is, in fact, to be considered when the circumstances viewed objectively, do not justify the police conduct.

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54. 414 U.S. at 221 n.1, 94 S. Ct. at 470 n.1.

55. 479 U.S. 367, 107 S. Ct. 738 (1987).

56. Id. at 372, 107 S. Ct. at 742.

57. Id. at 376, 107 S. Ct. at 743.

58. 3 LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 7.5(d) (2d ed. Supp. 1988).

Do the actions of the police detective in *Causey*, viewed objectively, justify the search? Did the police act in bad faith? These officers admittedly arrested Causey in bad faith. They had no intention to question or prosecute him on the outstanding bench warrant. In fact, the statute of limitations for the underlying crime had run. Causey was never prosecuted on the outstanding warrant. Further, the detectives stated in court that their only purpose in arresting Causey was to question him, while in custody, about the bank robbery, a crime for which they did not have probable cause to arrest Causey. Finally, the detectives stated that, in general, they never arrest people on city court warrants.

Is this bad faith? It is this writer's opinion that these detectives clearly acted in bad faith with their sole purpose in arresting Causey being investigatory. Can their actions be justified viewing the circumstances objectively? Not in this author's opinion. The officers admittedly stepped outside of their ordinary procedure to execute a city court bench warrant for failure-to-appear on a crime that had prescribed.

Certainly, we all want to see criminals arrested and put in jail. However, violating the fourth amendment in attempting to achieve this goal is an injustice against society that cannot be condoned. As Judge Wisdom profoundly stated in *Amador-Gonzalez*, "The Bill of Rights is a basic premise on which our system of law and order rests. It is engraved on the conscience of the court, to be heeded in a narcotics case no less than in any other case."[59] Mr. Causey, like any citizen of the United States, deserves the protection of the fourth amendment. Although we may strongly desire to punish the guilty, that punishment must be implemented in a constitutionally permissible fashion. To permit the circumvention of a constitutionally guaranteed right is to take the first step toward the elimination of constitutionally guaranteed rights as a whole.

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59. 391 F.2d 308, 319 (5th Cir. 1968).